

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-and-

VULCAN SOCIETY INC., for itself and on behalf of its
members; MARCUS HAYWOOD, CANDIDO NUÑEZ,
and ROGER GREGG, individually and on behalf of a
class of all others similarly situated,

Civil Action No. CV 07 2067
(NGG)(RLM)

Plaintiffs-Intervenors,

ECF Case

-against-

THE CITY OF NEW YORK; THE FIRE DEPARTMENT
OF THE CITY OF NEW YORK; NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES, MAYOR MICHAEL BLOOMBERG and
NEW YORK CITY FIRE COMMISSIONER NICHOLAS
SCOPPETTA, in their individual and official capacities,

**DECLARATION OF
DARIUS CHARNEY**

Defendants.

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DARIUS CHARNEY hereby declares as follows:

1. I am a staff attorney with Center for Constitutional Rights, attorneys for Plaintiffs-Intervenors in the above-entitled action.
2. I submit this declaration in support of Plaintiffs-Intervenors' motion for leave to amend and supplement their Complaint.
3. Attached hereto as Exhibit 1 is Plaintiffs-Intervenors' proposed Amended Complaint.
4. In making their motion for leave to amend and supplement their Complaint, Plaintiffs-Intervenors rely not only on this declaration and the attached exhibit, but on the Reply

Memorandum of Law submitted in support of Plaintiffs-Intervenors' Motion for Class Certification.

5. This motion is occasioned by the fact that in deposition testimony and documents produced by Defendants, it has become clear that a number of minimum requirements for the firefighter position, including 30 college credits, a driver's license and first responder certification, have created barriers to the hiring of black applicants for firefighter positions and are not job related. These claims were first raised in the EEOC charges filed by the Plaintiffs-Intervenors. They have now been verified to the point that an amendment to the Complaint will conform the pleadings to the proof and clarify their inclusion in and importance to this case.

6. In addition, the proposed Amended Complaint alleges that use of the Candidate Investigation Division ("CID") and Personnel Review Board ("PRB"), entities with broad discretion to decide an applicant's fitness to serve, favors some applicants who have friends or relatives in the FDNY or who sit on the PRB, with adverse effects on black applicants who are not so favored.

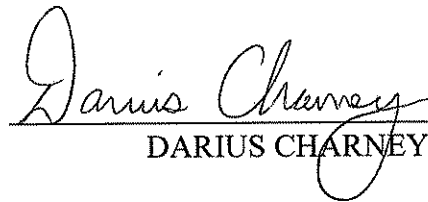
7. Finally, because Exam 6019 –for which applicants' scores were not released until November 2007, after the filing of the original Complaint – has also had an adverse impact on black applicants and has continued the use of an improper written cognitive test and minimum requirements that were not properly validated, use of that examination is made subject to this lawsuit as well.

8. The Plaintiffs-Intervenors advised Defendants in early April 2008 in response to interrogatories that they were including these claims in the case. There was no objection from the Defendants or from the United States.

9. If ultimate relief is to make whole the applicants who have suffered from the continued violation of their rights by Defendants and to protect future applicants, the additional claims added to the proposed Amended Complaint are necessary and warranted. They are directly related to the claims initially raised and they have already been the subject of extensive deposition questioning and documentary disclosure without objection by the City or the USA. The Department of Justice itself has requested, and the City has provided, thousands of pages of documents relating to Exam 6019, including, *inter alia*, the test preparation documents, the exam itself, and the scores and rankings by race. Dr. Catherine Cline, the consultant who prepared Exam 6019, has been deposed for more than two full days by the United States.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 25, 2008


DARIUS CHARNEY